

# **EXHIBIT A**

**Subject:** Re: Debriefing status, and FOIA/Privacy Act records requests  
**Date:** Thursday, June 6, 2013 8:47:34 AM Central Daylight Time  
**From:** James Myrick  
**To:** afprogram@afsbirsttr.net, david.sikora@wpafb.af.mil, afmc.foia@wpafb.af.mil  
**CC:** Shirley.Schmieder@eglin.af.mil

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**From:** Jay Myrick <jaymyrick@comcast.net>  
**Date:** Friday, May 31, 2013 3:43 PM  
**To:** <afprogram@afsbirsttr.net>, <david.sikora@wpafb.af.mil>, <afmc.foia@wpafb.af.mil>  
**Cc:** <Shirley.Schmieder@eglin.af.mil>, Jay Myrick <jaymyrick@comcast.net>  
**Subject:** Debriefing status, and FOIA/Privacy Act records requests

HQ AFMC/A60S (FOIA)  
4225 Logistics Avenue  
Room A-108  
Wright-Patterson AFB, OH 45433  
afmc.foia@wpafb.af.mil

Copy: David Sikora, Air Force SBIR Program Manager  
AF SBIR/STTR Program Support  
Shirley Schneider

It should be easy to just delete the reviewer names and promptly forward the rejections/evaluations of my SBIR proposals F131-103-2211 and F131-103-1990 for AF Topic AF131-103. But it is now well over a month since I requested a debriefing on April 22, 2013. Here is the status today from the AF website:

<u>Proposal #</u>	<u>Topic #</u>	<u>Date Selection / Non-Selection Notification Sent</u>	<u>Date Debrief Requested</u>	<u>Date Debrief Request Approved</u>		
F131-103-2211	AF131-103	04/22/2013	04/22/2013		<a href="#">View</a>	<a href="#">Modify</a>
F131-103-1990	AF131-103	04/22/2013	04/22/2013		<a href="#">View</a>	<a href="#">Modify</a>

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Have any debriefings been sent out to other proposers? I have been waiting patiently to review the reasons given by the Air Force reviewers for rejecting what I believe is very important nanoenergetic technology. I recently had the Army reject an energetic SBIR proposal because proposed materials materials were too cheap and too powerful. I just learned that the Army wants to pay MUCH more to its favored proposers for inherently inferior approaches, which is quite frustrating.

I have grown increasingly convinced that the SBIR program has become crooked, and used as a funding mechanism for cronies, associates of large prime military contractors, or other incumbent, improperly favored or connected proposers. I am interested in learning about how the SBIR program is now conducted, compliance mechanisms, connections of SBIR award-winners with DoD prior to rejection of other proposers, etc. Accordingly, attached is a FOIA and Privacy Act request to obtain records under the provisions of 5 USC 552. Please forward to the appropriate officer(s). Thanks.

Does FAR 15.506 apply to Air Force SBIR debriefings? If so, I request all of the required information,. How do I present my questions, and what is the timeline for answering those questions? Thanks.

FAR 15.506 Postaward debriefing of offerors

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a) (2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) **At a minimum, the debriefing information shall include—**

**(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;**

**(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;**

**(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;**

**(4) A summary of the rationale for award;**

**(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and**

**(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.**

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

[emphasis supplied]

Thank you for your attention to these requests.

Respectfully,

Jay Myrick

May 31, 2013

By email, with US Postal Service Mail hard copy with proof of identity to:

OSD/JS FOIA Requester Service Center Office of Freedom of Information 1155 Defense  
Pentagon Washington, DC 20301-1155

HQ AFMC/A6OS (FOIA)  
4225 Logistics Avenue  
Room A-108  
Wright-Patterson AFB, OH 45433  
[afmc.foia@wpafb.af.mil](mailto:afmc.foia@wpafb.af.mil)

Dear FOIA and Privacy Act Officer(s),

This is a request under the Freedom of Information Act (FOIA) and the Privacy Act, 5 U.S.C. § 552.

I request that a copy of the following document(s) and other records be provided to me:

1. All records relating to review, evaluation, scoring, or rejection ("non-selection") of my SBIR proposal F123-103 F131-103-1990 for "Inexpensive Tonnage Production of Air-Stable, Core-Shell Detonating Nanonergetics" or my SBIR proposal F131-103-1990 for "Cheap Bulk, Air-Stable, Oxide-Free <25nm Silicon Core-Shell Energetics". These proposals were made to Air Force SBIR Topic AF131-103. Requested records include, but are not limited to, any reasons or justification for non-selection, or scoring any portion of these proposals with less than the maximum score. Requested records also include review of aspects of my proposals for inexpensive manufacture of large quantities of nanoenergetics, and for producing extremely rapid reaction of the proposed nanoenergetic materials.
2. The first two (non-proprietary) cover pages of each proposal submitted to Air Force SBIR Topic AF131-103 entitled "Kilogram-Scale Production of Air-Stable Nano-Scale Energetic Core-Shell Clusters". These pages must be nonproprietary according to the submission instructions.
3. All records relating to the origin, drafting, purpose, release or publication of Air Force Topic AF131-103, including the source or sources of its subject matter, selection criteria or goals. Such Topic subject matter sources particularly include but are not limited to communications (such as "White Papers", technical proposals or marketing) with or from potential proposers or others at any time after January 1, 2010.
4. All communications or other records relating to Department of Defense funding to, or research collaboration with, any proposers not yet rejected or "non-selected" for award under Air Force SBIR Topic AF131-103, at any time prior to such selection. This request includes, but is not limited to, any such collaboration or funding managed by any Topic originator or drafter of this Topic, any evaluator or reviewer of any proposal submitted to this Topic, or any person participating in or responsible for selection or non-selection of proposals to this Topic.

5. All communications or other records of Air Force personnel or agents (particularly including personnel participating in or responsible for origination, drafting, management, proposal review or proposal selection for Topic AF131-103) with any proposer (including the business, technical staff, consultants or subcontractors) to Topic AF131-103 at any time prior to selection or non-selection of proposals to the Topic. This request includes, but is not limited to, reports, memos and email relating to meetings, phone calls and technology conferences.
6. All records relating to policy, practice or quality control to make sure that SBIR Topics are not created, originated, drafted, directed or preferred for preselected or preferred proposers, proposals or technology. This request includes, but is not limited to, preventing preference or advantage for previously funded proposers, or proposers who have communicated with or marketed to the Air Force with respect to subject matter of a Topic prior to release of the Topic to the public. This request also includes records relating to quality control to prevent use of "secret" selection criteria not fully and completely disclosed in the Topic specifications for selection or nonselection of proposals.
7. All records relating to criteria for scoring SBIR proposal commercialization. This request includes any criteria which could permit higher scores for proposers based on a pre-existing relationship with a large, "prime" Department of Defense contractor, than for small business proposers which offer to develop a product or service themselves or sell a product or service to directly to DoD at a fair or low price.
8. All records relating to transmission or review of any proposal to Topic AF131-103 to or by persons other than the Topic evaluators (including but not limited to other DOD agencies such as the Army, DARPA, Navy, DTRA). (I understand that proposals are sometimes sent to other agencies for comment)
9. All references or other records naming, listing or otherwise relating to me (James Myrick), Hard Sciences Corporation or US Enginewing, including my email address [jaymyrick@comcast.net](mailto:jaymyrick@comcast.net) or my nickname Jay Myrick or my phone number 847-337-9305. This includes any reference information about an offeror's past performance referred to in FAR 15.506. I understand there is a database of SBIR contract information, which is used to evaluate SBIR proposals (I was told it would be "bad" to miss a contract date and have it put in this database, etc). This request also includes, all records relating to the date, nature, and purpose of each disclosure of a record relating to me, to any person or to another agency, and the name and address of the person or agency to whom the disclosure was made. The increasing use of computers and sophisticated information technology, greatly magnifies the harm that can occur from collection, maintenance, use, or dissemination of personal information, including opportunities for DoD SBIR contract award, due process and other legal protections.
10. All records relating to policy, procedures or practice for selecting SBIR/STTR proposals for award or rejection, including audits for compliance. I understand that some proposals do not get funding consideration by award panels, and that only some proposals are selected for award consideration by award panel; this request includes but is not limited to records relating to selection or non-selection for such competitive award competition.

11. All data, studies, inquiries, protests, complaints, audits and other records relating to:
  - (a) any scoring of SBIR proposals by SBIR proposal evaluators of those they know, have communicated with or are otherwise connected with, differently or higher than SBIR proposals of those they don't know, have not communicated with, or are otherwise not connected with,
  - (b) consistent or inconsistent scoring of proposals to an SBIR Topic by individual SBIR evaluators,
  - (c) consistent or inconsistent scoring by different SBIR Topic evaluators for the same SBIR proposal, or
  - (d) whether or the extent to which inconsistent, different or biased SBIR evaluator scoring of SBIR proposals is done to eliminate proposals from award consideration, to favor a pre-connected proposer known to the evaluator(s).
12. All records relating to any disparity in SBIR/STTR award by state or region, including possible reasons for such disparity(ies), communications with state or regional entities about such disparity(ies), and efforts or ideas for addressing such disparity(ies).
13. All records describing or otherwise relating to how to determine whether an SBIR/STTR Topic is "wired", has one or more pre-favorites, is intended for or directed for one or more potential proposers which have been previously funded by DoD, or is based on non-public technology previously communicated to DoD by a potential proposer. The importance of determining and avoiding SBIR Topics which are "wired" was described to attendees, including me, at an SBIR conference, to help "unconnected" proposers not waste their time.
14. All records relating to state, multistate, or other local government or small-business-promoting organization efforts to increase the number of SBIR awards to their state or region, including efforts to help or advise small businesses to market to, connect with, present technology to, or become known to DoD personnel prior to SBIR Topic release.
15. All records relating to Air Force or DoD policies, practices or disciplinary measures to limit, prevent or correct biased, distorted or inconsistent SBIR/STTR proposal scoring or evaluation by rogue, biased or incompetent evaluators or reviewers. This request includes, but is not limited to, such scoring for the purpose of crony funding.

To assist in locating records, a recent SBIR solicitation says the Air Force Research Laboratory (AFRL), Wright-Patterson Air Force Base, Ohio, is responsible for the implementation and management of the AF Small Business Innovation Research (SBIR) Program. The AF Program Manager listed in the solicitation is Mr. Augustine Vu, 1-800-222-0336. Mr. David Sikora, [david.sikora@wpafb.af.mil](mailto:david.sikora@wpafb.af.mil) may also be the/an Air Force SBIR Program Manager, and has communications relating to me and Topic AF131-103. Shirley Schmieder (850) 882-3362 is listed as the Program Manager for SBIR Topic AF131-103. Amanda Schrand, 850-882-2203, [Amanda.schrand@eglin.af.mil](mailto:Amanda.schrand@eglin.af.mil), is listed as the TPOC for SBIR Topic AF131-103, and may well have participated in creation of Topic AF131-103, and evaluation of proposals to this Topic. DoD [help@sbirsource.com](mailto:help@sbirsource.com) personnel also may have email records relating to my April 2013

correspondence with them about their “2013.2 SBIR Topic Alert”.

It should be fairly easy to search for these records in email and other DoD records. Because “White Paper” communications and marketing to DoD personnel may have been deleted from personal files, it is requested that backup records be searched. In addition to checking with personnel involved in the subject mater of the requests, this is easily done by computer search for proposer name and/or other relevant search terms.

This request is made because I believe, based on my personal and professional experience, that the SBIR program is being used to wrongfully fund pre-favored proposers and/or technology known to proposal evaluators (eg, crony funding). I believe that proposers which are not “connected” or “pre-favored” are wrongfully and inconsistently evaluated to reduce their scores, and to eliminate them from award. Such behavior is not only improper for public bidding, but also wastes enormous small business resources and effort. For example, there were many Proposers, including me, to Army SBIR Topic A121-005 seeking cheap \$25 per kilogram nanosilicon energetic powder as a substitute for nanoaluminum energetic powder. To the extent this DoD Topic was written to favor, or intended to fund, pre-favored proposer(s), and/or wrongful and inconsistent evaluation criteria were used to reject “unconnected” proposers, the work and effort of the rejected small business proposers was knowingly and willfully solicited and wasted by DoD. For example, my proposal A121-005-1162 to Army SBIR Topic A121-005 took 2-3 weeks to write. It was wrongfully *rejected* for the claimed “*weakness*” of actually offering to make and sell powerful nanoenergetics which the Army admitted would meet the Topic bid specifications, directly to the Army at \$25 per kilogram upon Phase I development. I have now learned that despite rejecting my proposal for the “*weakness*” of offering to commercialize by actually making and selling Topic material at \$25/kg, the Army actually funded a proposal to a company connected to a prime DoD contractor which would only have a “5kg/day production rate at a cost of \$185/kg” at the end of Phase I. The simple phase I equipment (easily scalable to tonnage production) of my proposal would produce up to 10 pounds per *hour* at less than \$25 per kilogram, as justified by raw material and literature costing. Even at the end of Phase II, this funded proposal selected by the Army would only have an alleged “path” to production at a cost “nearing \$50/kg”, much more than the \$10 or less per kilogram cost of my proposal for a more powerful nanosilicon substitute for nanoaluminum. The Army claimed that production and actual offer for sale at \$25/Kg was a “weakness” to reject my proposal, but production of 5Kg per day at a cost of \$185/Kg was a “strength” for contract award. The Army also rejected my proposal for the claimed “*weakness*” of *optionally* proposing an even more powerful nanosilicon energetic, which could include carbon and boron from *extremely cheap raw materials*. But I have now learned that the Army instead funded a proposal which uses a **VERY expensive raw material (silane, SiH<sub>4</sub>)** which prevents production at the \$25 or \$10 per kilogram cost of my proposal, and which includes carbon and fluorine “impurities”. Powerful nanosilicon energetics at less than \$10/Kg were a “weakness” for rejection of my proposal, but very expensive nanosilicon made from extremely expensive raw materials containing carbon “impurities” was a “strength” for award. This is clear evidence of extreme bias and distorted evaluation, which was practiced and fully accepted in the DoD SBIR Program. It also appears that SBIR selection criteria may be intentionally distorted to favor proposals which are connected to large “prime” contractors (eg, those which employ DoD personnel after they leave DoD). It does not appear either proposal actually selected by DoD for

Army Topic A121-005 offered to actually sell any cheap nanosilicon within the Topic specifications to the Army at \$25 per kilogram at the end of Phase I. My proposal was so MUCH cheaper (as supported by actual raw material and literature cost calculations), and MUCH better. It was an excellent proposal which the Army admitted met all the original Topic bid specifications. Without any legitimate substantive reasons, the Army fabricated biased, inconsistent, wrongfully phony reasons to reject my "unconnected" proposal. The Army rejected the proposal by claiming proposal "*weaknesses*" of commercializing by offering to actually sell the product to the Army at the end of Phase I at too cheap a price which was much lower than their favored proposers, and because a product we offered was too powerful for the Topic goal of replacing nanoaluminum in powerful explosives and rocket fuels. The Topic claimed it wanted cheap nanosilicon powder to replace nanoaluminum energetics, but the Army actually wanted to pay much more to its favored bidders. This is truly outrageous behavior which was not corrected, despite formal notice to the Army, and which demands investigation and public dissemination.

I request a fee waiver. In order to help you determine my status for the purpose of fee waiver or assessing fees, you should know that I am a US citizen, and that this request is made as part of newsgathering and factgathering for public dissemination, and not for commercial use. I am an individual seeking information for personal use to write one or more papers for publication about the conduct of the DoD SBIR program, and not for a commercial use (I do not even plan to sell the papers). Possible titles include "Anatomy of SBIR Funding Preferences" or "Distortion of SBIR evaluation criteria for crony funding". I am also considering starting a public website for "unconnected" SBIR proposers to post SBIR rejection reasons and other evaluation behavior, so a historical database will be available, and so that "unconnected" small businesses are less disadvantaged by their small size and lack of "connections" to DoD for contract award preference purposes. The accompanying letter from the InnovationPAC evidences the public importance of issues of wrongful SBIR evaluation of competitive contract bids which meet bid criteria. The InnovationPAC has been an independent organization representing and supporting some 14,000 innovators and entrepreneurs within the SBIR community. The public importance of these issues fully supports fee waiver in the public interest.


Disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the Department of Defense in spending SBIR funding, and is not primarily in my commercial interest. Public knowledge of biased, distorted and wrongful evaluation of government contract bids is extremely important to the small business community. Based on personal experience such as that described above and other bizarre rejection reasons, I have concluded that the DoD SBIR Program is being misused to fund cronies and pre-favored proposers. I believe that small business proposers who are not "connected" to DoD or its proposal evaluators are subjected to wrongful evaluation, for the purpose of awarding SBIR funds to pre-connected or crony proposers. This pattern of pre-selection includes basing SBIR Topics on undisclosed communications with potential proposers, withholding of information about actual selection criteria from "unconnected" proposers, inclusion of criteria in Topics which are unnecessary or even adverse for the Topic purpose or goals, bizarre wrongful rejection reasons, and/or favoritism for proposers that have a pre-existing connection or relationship with one or more large "prime" defense contractors.



If my fee waiver request is properly denied (subject to appeal), I am willing to pay fees for this request up to a maximum of \$500 (five hundred dollars) for the FOIA request, and up to \$100 (one hundred dollars) for the Privacy Act request. If you estimate that the fees will exceed this limit, please inform me first.

My telephone number and email at which I can be contacted if necessary to discuss any aspect of my request are listed below.

Respectfully,

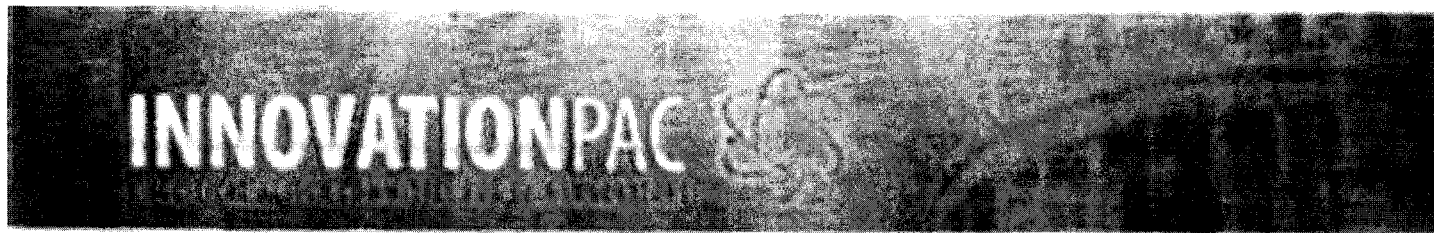


James J. Myrick

748 Greenwood Avenue

Glencoe, Illinois 60022

[jaymyrick@comcast.net](mailto:jaymyrick@comcast.net) 847-337-9305



July 31, 2012

The Honorable Gene L. Dodaro  
Comptroller General  
Government Accountability Office  
441 G St., NW  
Washington, DC 20548

C: James Myrick, protester  
Re: GAO Protest B-406970

Comptroller General Dodaro,

InnovationPAC is an independent advocacy voice representing and supporting some 14,000 innovators and entrepreneurs within the SBIR community. We are a voice for, and supported by, SBIR innovators. Issues in the above protest could broadly and adversely affect commercialization and innovation by the SBIR community, and have a detrimental effect on a program that is an essential driver of America's global technology leadership and domestic high-tech job creation.

The Proposer has raised specific allegations that raise general concerns for the SBIR community, and ought to be addressed with respect to those concerns.

1. Proposer allegedly offered to sell the critically needed, topic-specific energetic fuel product to the Army for \$5,000, which the solicitation indicated costs the Army on the order of approximately \$500,000. The offer to produce and sell the desired product to the Army at approximately 1% of current cost was designated a weakness in the proposal leading to its rejection. Can an agency reject an SBIR proposal for the claimed "weakness" of quickly transitioning from Phase I SBIR technology development to commercial sale which the soliciting agency desires at the lowest price as sought by the agency? Does such a rejection violate the fundamental commercialization goals of the SBIR program?

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Paid for by **Innovation PAC** ° PO BOX 75021 ° Washington, DC 20013 ° [www.InnovationPAC.org](http://www.InnovationPAC.org)

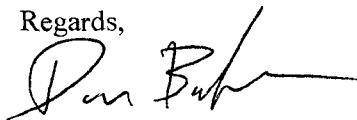
The Innovation Political Action Committee (InnovationPAC) is an independent, non-connected political action committee registered with the Federal Elections Commission (FEC). Contributions to InnovationPAC will be used in connection with federal elections to the extent permitted by law and are governed by federal election law. Contributions are STRICTLY voluntary and are not limited to any suggested amounts; however, there is a limit of \$5,000 from an individual per calendar year. **Contributions from foreign nationals is prohibited.** Contributions to InnovationPAC are not tax deductible for federal income tax purposes.

The logo for InnovationPAC is displayed in a bold, sans-serif font. To the right of the text is a circular emblem containing a stylized graphic. The entire logo is set against a dark, textured background that appears to be a close-up of a surface with some circular patterns.

2. Proposer allegedly met all the metrics of the original solicitation Topic, and proposed a far less expensive product that better met the specified needs of the agency for the stated energetic fuel purpose of the solicitation Topic. In essence, the rejection of the SBIR proposal appears to have been based on the claimed “weakness” of proposing a cheaper and more powerful desired product – namely the energetic fuel product – or else on some other, unstated reasons or criteria not disclosed in the SBIR Topic solicitation. Does it violate a fundamental SBIR purpose of supporting small business innovation, for an agency to reject such a proposal which meets the metrics of the original solicitation Topic, based on unstated requirements not in the original solicitation?

We take no position whatsoever on the accuracy of the protest allegations and the merits of these issues. But we submit that these issues are of broad and fundamental importance to the SBIR procurement system, and the SBIR community which we represent and support, and should be decided in a fair and transparent manner.

Regards,

A handwritten signature in black ink, appearing to read "Dan Backer", is written over a horizontal line.

Dan Backer, Esq.

Innovation PAC Treasurer

@InnovationPAC // 202-210-5431 // [www.InnovationPAC.org](http://www.InnovationPAC.org)

***Innovation PAC***

A Political Action Committee for SBIR Innovators

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